IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9892 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MITESH SURESHBHAI GOPAL - Applicant(s)
Versus
STATE OF GUJART - Respondent(s)

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Appearance :
MR KJ SHETHNA for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/08/2007

ORAL JUDGMENT

1. By way of this application under section 482 of the Criminal Procedure Code, the applicant – original accused No.4 has prayed for an appropriate order quashing and setting aside the

judgment and order dated 17.1.2007 passed on Annexure – F (Collectively) and also the notice dated 22.8.2007 given to accused No.4 on 23.8.2007 by the Investigating Officer.

2. It appears from the record that an FIR came to be lodged against the applicant and others before the Sanand Police Station for the offence under sections 147, 148, 149, 120(B), 337, 323, 504, 506(2) & 188 of Indian Penal Code r.w. sections 3(1) and 10 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act; 1989 and under section 135 of the Bombay Police Act. It appears that the applicant preferred Special Criminal Application No.2111 of 2006 before this Court for anticipatory bail and the same came to be withdrawn by the applicant on 15.12.2006 and this Court observed that it will be open for the applicant to surrender before the learned trial Court and the same will be treated as a custody and thereafter an appropriate order on the bail application be passed. It further appears that Criminal Misc.

Application No.1258 of 2006 was preferred by the applicant for regular bail before the learned Special Judge (Atrocity), Ahmedabad (Rural), and by order dated 8.1.2007 the learned Special Judge (Atrocity), Sessions Court, Ahmedabad (Rural) allowed the said application and released all the accused on regular bail. It appears that in the said application, there was no reference allowing the Investigating Officer to submit an appropriate application for remand and the Investigating Officer was desirous of taking the accused persons on remand for the purpose of further investigation and therefore, the concerned Investigating Officer submitted an application before the learned Special Judge (Atrocity) to pass order, seeking clarification of the order regarding the bail and with regard to whether the Investigating Officer can pray for the remand of the policy custody of the accused or not. By Yadi dated 17.1.2007, the learned Special Judge (Atrocity), Ahmedabad (Rural), clarified and/or observed that as in the present case originally, proceedings under

section 438 were initiated and the Hon'ble High Court permitted to decide application under section 439 therefore, procedure for remand was not mentioned but it is also part of investigation, therefore, Yadi be issued to the learned JMFC, Sanand that Investigating Officer is empowered to apply for remand application against accused and the learned JMFC, Sanand will decide the same in accordance with law. That thereafter by impugned notice dated 22.8.2007 the accused persons inclusive of the applicant are directed and/or called upon to remain present before the learned JMFC as the Investigating Officer proposes to submit an appropriate application for police remand. Being aggrieved and dissatisfied with the order dated 17.1.2007 which can be termed as clarification as well as the impugned notice dated 23.8.2007 the applicant – original accused No.4 has preferred present application.

3. Shri K.J.Shethna, learned advocate appearing for the applicant has submitted that as such, the

learned Special Court has no jurisdiction to review its own order and that it was not proper to grant the permission to the Investigating Officer asking for remand after the period of 6 months. It is submitted that such an application for remand itself is not maintainable and therefore, the order dated 17.1.2007 as well as the impugned notice dated 22.8.2007 require to be quash and set aside.

4. Having heard the learned advocates appearing for the respective parties, this Court is of the opinion that as such, the learned Special Judge (Atrocity), by order / clarification dated 17.1.2007 has only clarified that the Investigating Officer is empowered to apply for remand application against the accused and the learned JMFC shall decide the same in accordance with law. Under the circumstances, no prejudice will be caused to the applicant as no decision has been taken by the learned JMFC, Sanand on the remand application and even as observed by the learned Special Judge (Atrocity) in its

order dated 17.1.2007 that he has to decide the remand application in accordance with law. Under the circumstances, this application is not entertained and is disposed of with an observation that the learned JMFC, Sanand to decide and dispose of and consider the remand application in accordance with law and on its own merits and all the contentions with regard to the maintainability / entertainability and other contentions / submissions are kept open and the same can be raised by all the concerned parties inclusive of the Investigating Officer as well as accused persons and the same shall be considered and dealt with by the learned trial Court in accordance with law and on its own merits.

5. With these, present application is disposed of.

[M.R.Shah, J.]

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